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Debtors In Possession

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re
VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., *et al.*,
Debtors and Debtors In Possession.

Lead Case No. 2:18-bk-20151-ER

Jointly Administered With:

Case No. 2:18-bk-20162-ER

Case No. 2:18-bk-20163-ER

Case No. 2:18-bk-20164-ER

Case No. 2:18-bk-20165-ER

Case No. 2:18-bk-20167-ER

Case No. 2:18-bk-20168-ER

Case No. 2:18-bk-20169-ER

Case No. 2:18-bk-20171-ER

Case No. 2:18-bk-20172-ER

Case No. 2:18-bk-20173-ER

Case No. 2:18-bk-20175-ER

Case No. 2:18-bk-20176-ER

Case No. 2:18-bk-20178-ER

Case No. 2:18-bk-20179-ER

Case No. 2:18-bk-20180-ER

Case No. 2:18-bk-20181-ER

☒ Affects All Debtors

☐ Affects Verity Health System of
California, Inc.

☐ Affects O'Connor Hospital

☐ Affects Saint Louise Regional Hospital

☐ Affects St. Francis Medical Center

☐ Affects St. Vincent Medical Center

☐ Affects Seton Medical Center

☐ Affects O'Connor Hospital Foundation

☐ Affects Saint Louise Regional Hospital
Foundation

☐ Affects St. Francis Medical Center of
Lynwood Foundation

☐ Affects St. Vincent Foundation

☐ Affects St. Vincent Dialysis Center,
Inc.

☐ Affects Seton Medical Center
Foundation

☐ Affects Verity Business Services

☐ Affects Verity Medical Foundation

☐ Affects Verity Holdings, LLC

☐ Affects De Paul Ventures, LLC

☐ Affects De Paul Ventures - San Jose
Dialysis, LLC

Debtors and Debtors In
Possession.

Hon. Judge Ernest M. Robles
Chapter 11 Cases

**DEBTORS' NOTICE OF MOTION AND FOURTH
MOTION FOR ENTRY OF AN ORDER PURSUANT TO
§ 365(d)(4) OF THE BANKRUPTCY CODE EXTENDING
THE TIME TO ASSUME OR REJECT UNEXPIRED
LEASES OF NONRESIDENTIAL REAL PROPERTY
NUNC PRO TUNC; MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION OF RICHARD
ADCOCK IN SUPPORT THEREOF**

Hearing:

Date: October 22, 2019

Time: 10:00 a.m.

Place: Courtroom 1568

255 E. Temple Street

Los Angeles, CA 90012

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
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(213) 623-9300



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1 **PLEASE TAKE NOTICE** that, at the above-referenced date, time and location, Verity
2 Health System of California, Inc., (“VHS”), and the above-referenced affiliated debtors
3 (collectively, the “Debtors”), the debtors and debtors in possession in the above-captioned chapter
4 11 bankruptcy cases (the “Cases”), will move the Court for entry of an order, pursuant to 11
5 U.S.C. § 365(d)(4), extending the time within which the Debtors must assume or reject unexpired
6 leases of nonresidential real property to December 24, 2019 (the “Motion”) with such relief
7 effective *nunc pro tunc* to September 25, 2019.

8 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice and
9 Motion, the attached Memorandum of Points and Authorities, the *Declaration of Richard G.*
10 *Adcock in Support of Emergency First-Day Motions* [Docket No. 8], the Declaration of Richard
11 G. Adcock attached hereto, the arguments of counsel, and other admissible evidence properly
12 brought before the Court at or before the hearing on this Motion. In addition, the Debtors request
13 that the Court take judicial notice of all documents filed with the Court in the Cases.

14 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-
15 1(f), any party opposing or responding to the Motion must file a response (the “Response”) with
16 the Bankruptcy Court and serve a copy of it upon the moving party and the United States Trustee
17 not later than 14 days before the date designated for the hearing. A Response must be a complete
18 written statement of all reasons in opposition to the Motion or in support, declarations and copies
19 of all evidence on which the responding party intends to rely, and any responding memorandum
20 of points and authorities.

21 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-
22 1(h), the failure to file and serve a timely a Response to the Motion may be deemed by the Court
23 to be consent to the relief requested herein.

1 Dated: September 27, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

4 By /s/ Tania M. Moyron
Tania M. Moyron

6 Attorneys for Verity Health Systems of
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

RELIEF REQUESTED

By this motion (the “Motion”), the Debtors request the entry of an order, pursuant to § 365(d)(4) of title 11 of the United States Code (the “Bankruptcy Code”),¹ granting a 90-day extension to assume or reject the unexpired leases *nunc pro tunc* from September 25, 2019, to December 24, 2019. Such an extension would be without prejudice to the rights of the Debtors to seek further extensions of the time to assume or reject the unexpired leases as contemplated by § 365(d)(4)(B)(ii).

II.

JURISDICTION AND VENUE

The Court has subject matter jurisdiction to consider and determine this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Debtors consent to entry of final orders and judgments by the bankruptcy judge. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The statutory predicates for the relief sought herein are §§ 105, 365(a), and 365(d)(4) and Rule 6006.

III.

BACKGROUND FACTS

A. General Background

1. On August 31, 2018 (“Petition Date”), Verity Health System of California, Inc., (“VHS”), and the above-referenced affiliated debtors (collectively, the “Debtors”), the debtors and debtors in possession in the above-captioned chapter 11 bankruptcy cases, each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Cases”). The Cases are currently being jointly administered before the Bankruptcy Court. [Docket No. 17]. Since the

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all “Rule” references are to the Federal Rules of Bankruptcy Procedure.

1 commencement of their Cases, the Debtors have been operating their businesses as debtors in
2 possession pursuant to §§ 1107 and 1108.

3 2. Debtor VHS, a California nonprofit public benefit corporation, as of the petition
4 date, was the sole corporate member of five Debtor California nonprofit public benefit
5 corporations that operate five hospitals—O’Connor Hospital, Saint Louise Regional Hospital, St.
6 Francis Medical Center and Seton Medical Center, including Seton Medical Center Coastsides
7 Campus (collectively, the “Hospitals”)—and other facilities in the state of California.

8 3. On the Petition Date, VHS, the Hospitals, Debtor Verity Medical Foundation and
9 their affiliated entities operated as a nonprofit health care system, with approximately 1,680
10 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and
11 a host of medical specialties, including tertiary and quaternary care. The Debtors continue to
12 operate their existing health care system during these Cases.

13 4. The Debtors have determined that they will maximize value in the Cases through
14 multiple sales. On December 27, 2018, the Court entered an order [Docket No. 1153] approving
15 Santa Clara County as the purchaser for two of the Debtors’ hospitals in Santa Clara County—
16 Saint Louise Medical Center and O’Connor Medical Center—and related assets at a price of
17 approximately \$235 million. The sale closed on February 28, 2019 (the “Santa Clara Sale”).

18 5. On February 19, 2019, the Court entered an order [Docket No. 1572] approving,
19 among other things, a form stalking horse asset purchase agreement [Docket Nos. 1279 (Exhibit
20 1) and 2305] (the “APA”) between certain Debtors and Strategic Global Management, Inc.
21 (“SGM”) and bidding procedures for the sale of the Debtors remaining hospitals—St. Vincent
22 Medical Center, St. Francis Medical Center, Seton Medical Center and Seton Coastsides (the
23 “SGM Sale”). On May 2, 2019, the Court entered an order [Docket No. 2306] approving the
24 SGM Sale under the APA. The APA has an outside closing date of December 31, 2019. *See*
25 APA § 9.1. Under the APA, SGM has the right to designate contracts or leases for assumption up
26 to 30 days prior to the SGM Sale closing. *See* APA at § 1.11(a).

27 6. Though the Debtors have sold a significant amount of their assets, individual
28 Debtors are parties to multiple real-property, non-residential leases (the “Leases”) that are

necessary for the operation of the Debtors' remaining hospitals and businesses, including office and operational space. Though it is likely that some or all of these Leases will be assumed and assigned in connection with sales in these Cases and/or the Debtors' reorganization, the Debtors (and, as applicable, buyers (discussed, *infra*)) have not yet made a final determination regarding assumption or rejection of the specific Leases given that SGM may still designated leases for assumption or removal prior to the close. See APA at § 1.11(a). Further, the Debtors continue to utilize leased space to effectuate the sale process.

B. Previous Motions To Extend Time To Assume or Reject Leases of Nonresidential Real Property.

7. On December 28, 2018, the Debtors filed a *Motion to Extend Time To Assume or Reject Unexpired Leases of Nonresidential Real Property* [Docket No. 1157], which requested an extension of the Debtors' deadline to assume or reject unexpired leases of nonresidential real property to which a Debtor is the lessee from December 29, 2018 to March 29, 2019. On February 19, 2019, the Court entered an order [Docket No. 1579] granting this motion.

8. On March 29, 2019, the Debtors filed a *Second Motion to Extend Time To Assume or Reject Unexpired Leases of Nonresidential Real Property* [Docket No. 1955] (the "Second Motion"), which requested an extension of the Debtors' deadline to assume or reject unexpired leases of nonresidential real property to which a Debtor is the lessee from March 29, 2019 to June 27, 2019.

9. On May 15, 2019, the Court entered an order [Docket No. 2383] granting the Second Motion.

10. On June 27, 2019, the Debtors filed their *Third Motion to Extend Time To Assume or Reject Unexpired Leases of Nonresidential Real Property* [Docket No. 2637] (the "Third Motion").

11. On July 24, 2019, the Court issued a tentative ruling on the Third Motion [Docket No. 2760-1] (the "Tentative Ruling") and stated that:

The Court will deem a Lessor's non-opposition to constitute 'consent' for purposes of [11 U.S.C.] § 365(d)(4)(B)(ii). Absent extension of the deadline, the Debtors will lack the ability to

1 assume and assign any of the leases at issue to Strategic Global
2 Management [...] This would require SGM to renegotiate the leases,
making it more difficult for SGM to consummate the [SGM Sale].

3 Tentative Ruling at 3.

4 12. On August 1, 2019, the Court entered an order [Docket No. 2838] granting the
5 Third Motion, which incorporated the Tentative Ruling.

6 13. On September 3, 2019, the Debtors filed their *Debtors' Chapter 11 Plan of*
7 *Liquidation* (the "Plan") [Docket No. 2993] and their *Disclosure Statement Describing Debtors'*
8 *Chapter 11 Plan of Liquidation* [Docket No. 2994]. The Plan specifically provides for treatment
9 of unexpired leases of non-residential real property and contemplates an outside assumption or
10 rejection deadline as 30-days after the Plan's effective date. *See* Plan, § 11.1 at 55-56 ("[T]he
11 Debtors reserve the right to amend the Plan Supplement at any time on or before thirty (30) days
12 after the Effective Date to modify the Schedule of Assumed Contracts to include or delete any
13 Executory Agreements.").

14 **C. Relief Requested.**

15 14. The Debtors seek another extension of the deadline to assume or reject unexpired
16 leases of nonresidential real property to which a Debtor is a lessee. An extension is necessary for
17 the Debtors to continue their closing process consistent with the terms of the APA. The Debtors
18 are current on postpetition rent under the Leases and will continue to honor their obligations
19 under the Leases until such time as an order is entered providing for their assumption or rejection.
20 Although the Plan operates to extend the Debtors' deadline, the Debtors file this Motion
21 requesting *nunc pro tunc* relief out of an abundance of caution and in the interest of clarity.

22 **IV.**

23 **LEGAL ARGUMENT**

24 Section 365(d)(4)(A) provides that a debtor is automatically deemed to reject
25 nonresidential real property leases to which it is a party by the earlier of 120 days from the
26 petition date or the date on which a bankruptcy court confirms a plan of reorganization if it has
27 not moved for an extension. 11 U.S.C. § 365(d)(4)(A). Section 365(d)(4)(B)(i) provides that a
28 bankruptcy court may extend the applicable period to assume or reject unexpired nonresidential

1 real property leases for ninety days on the motion of a debtor “for cause,” which the Court did in
2 the Initial Extension Order. Section 365(d)(4)(B)(ii) provides that a Court may grant subsequent
3 extensions with the consent of the lessors.

4 The Court has equitable authority to extend the time period set forth in § 365(d)(4)(B) to
5 assume or reject a nonresidential lease. *See In re Victoria Station Inc.*, 840 F.2d 682, 684 (9th
6 Cir. 1988) (“because bankruptcy courts are courts of equity, they are compelled to disfavor lease
7 forfeiture that would imperil the debtor’s reorganization and impede rehabilitative goals”
8 accordingly, the time limits in § 365(d)(4) “should be read as a time limit upon the trustee or
9 debtor rather than upon the bankruptcy court”); *In re Sw. Aircraft Servs., Inc.*, 831 F.2d 848, 853
10 (9th Cir. 1987).

11 Courts have recognized the benefits to granting additional time under § 365(d)(4). *See In*
12 *re Channel Home Ctrs., Inc.*, 989 F.2d 682, 687 88 (3d Cir. 1993); *In re GST Telecom Inc.*, 2001
13 WL 686971 (D. Del. June 8, 2001). As the Third Circuit Court of Appeals stated, “nothing
14 prevents a bankruptcy court from granting an extension because a particular debtor needs
15 additional time to determine whether the assumption or rejection of particular leases is called for
16 by the plan of reorganization that it is attempting to develop.” *Channel Home Ctrs.*, 989 F.2d at
17 689. The Ninth Circuit Court of Appeals has also noted that bankruptcy courts often grant these
18 extensions. *See In re Circle K Corp.*, 127 F.3d 904, 909 (9th Cir. 1997).

19 Generally, courts consider the following non-exclusive factors to determine “cause”
20 (undefined under the Bankruptcy Code) for purposes of § 365(d)(4):

- 21 (1) whether the leases are an important asset of the estate such that the decision to
22 assume or reject would be central to a plan of reorganization;
- 23 (2) whether the cases are complex and involve large numbers of leases;
- 24 (3) whether the lessor continues to receive postpetition rental payments; and
- 25 (4) whether the debtor has had insufficient time to develop a plan.

26 *South St. Seaport L. P. v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 760-61 (2d
27 Cir. 1996); *In re Wedtech Corp.*, 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987); *Channel Home*
28 *Ctrs.*, 989 F.2d at 689 (“[I]t is permissible for a bankruptcy court to consider a particular debtor’s

1 need for more time in order to analyze leases in light of the plan it is formulating.”) (citing
2 *Wedtech*, 72 B.R. at 471-72).

3 The Bankruptcy Code provides “two routes by which a chapter 11 debtor-in-possession
4 may seek a court order that results in an effective assumption of an executory contract or lease.
5 The first is by motion. The second is by chapter 11 plan.” *In re R. Ring Enters., Inc.*, No. 08-
6 44903, at *1 2009 WL 779800 (Bankr. N.D. Cal. Feb. 1, 2009). As with a motion to extend the
7 deadline, the timely filing of a plan precludes automatic rejection of unexpired leases of
8 nonresidential real property. *See id.* at *1-*2 (applying the rationale of *Victoria Station*,
9 discussed *supra*, where a plan was filed within the period set forth under § 365(d)(4) and finding
10 that leases were not automatically rejected). The Debtors’ Plan, filed on September 3, 2019, was
11 sufficient to extend the deadline to assume or reject unexpired leases of non-residential real
12 property. Nevertheless, for the avoidance of doubt and in the interest of clarity, the Debtors filed
13 this motion for entry of an order confirming that cause exists to extend the deadline.

14 Sufficient cause exists for the Debtors’ requested extension in light of the Debtors’
15 postpetition operations, the provisions of the APA and the filing and pending solicitation of their
16 Plan. Under the terms of the SGM Sale—which provides for an outside closing date of December
17 31, 2019—SGM may designate contracts or leases for assumption up to 30 days prior to the SGM
18 Sale closing. *See* APA at § 1.11(a). The closing has yet to occur and the Debtors continue to
19 utilize leased space as SGM works to designate additional contracts and leases for assumption.
20 The requested extension of the Debtors’ deadline to assume or reject unexpired leases of
21 nonresidential real property will aid the Debtors’ continued operations and is consistent with the
22 Debtors’ efforts to effectuate the SGM Sale in accordance with the APA.

23 The extension is consistent with the terms of the Debtors’ Plan and the Court-approved
24 solicitation deadline. Consistent with the APA, the Debtors’ Plan provides that the Debtors will
25 file a schedule of executory agreements (including unexpired leases) prior to the Plan’s effective
26 date. *See* Plan at 18-19. The Plan further provides an outside date of 30-days after the effective
27 date to amend the schedule. *See id.*, § 11.1 at 55-56. The Debtors currently contemplate that the
28 Plan confirmation hearing will take place in late-November 2019. *See* Docket No. 2995 (Mot. to

1 Approve Disclosure Stmt., at 5). The Court has also extended the Debtors' exclusive period to
2 solicit acceptances of the Plan through December 24, 2019. *See* Docket No. 3039 (Exclusivity
3 Order at 2). Accordingly, the extension requested herein is consistent with the Debtors' current
4 Plan and Plan confirmation strategy.

5 Further, the requested extension will not prejudice the Debtors' landlords. The Debtors
6 are current and will continue to honor their obligations under the Leases until such time as an
7 order is entered providing for their assumption or rejection. The landlords continue to receive
8 postpetition rent and have previously consented to similar relief. The Debtors believe the
9 landlords will consent to this Motion, and, as the Court has previously ruled, their consent may be
10 deemed granted by failure to respond to this Motion. Accordingly, the Court should grant the
11 requested extension to December 24, 2019.

12 V.

13 **CONCLUSION**

14 The Debtors respectfully request that this Court (i) grant the Motion, (ii) enter an order,
15 pursuant to § 365(d)(4), granting a 90-day extension to assume or reject the unexpired leases to
16 December 24, 2019 with such relief granted *nunc pro tunc* to September 25, 2019, and (iii) grant
17 such further relief as the Court deems appropriate.

18
19 Dated: September 27, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON
NICHOLAS A. KOFFROTH

21
22 By /s/ Tania M. Moyron
Tania M. Moyron

23 Attorneys for Verity Health Systems of
24 California, Inc., et al.

DECLARATION OF RICHARD G. ADCOCK

I, Richard G. Adcock, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am the Chief Executive Officer (“CEO”) of Verity Health System of California, Inc. (“VHS”). I became the VHS’ CEO effective January 2018. Prior thereto, I served as VHS’ Chief Operating Officer (“COO”) beginning in August 2017. In my roles as COO and CEO at VHS, I have become intimately familiar with all aspects of VHS and its above-captioned affiliates who have also filed for bankruptcy protection (collectively the “Debtors,” and each a “Debtor”) as well as those affiliated entities that are not in bankruptcy.

2. Debtor VHS, a California nonprofit public benefit corporation, as of the petition date, was the sole corporate member of five Debtor California nonprofit public benefit corporations that operate five hospitals—O’Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center and Seton Medical Center, including Seton Medical Center Coastsides Campus (collectively, the “Hospitals”)—and other facilities in the state of California.

3. On the petition date, VHS, the Hospitals, Debtor Verity Medical Foundation and their affiliated entities operated as a nonprofit health care system, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, eleven medical office buildings, and a host of medical specialties, including tertiary and quaternary care. The Debtors continue to operate their existing health care system during these Cases.

4. Individual Debtors are parties to multiple real-property, non-residential leases necessary for the operation of the Debtors’ business, including office and operational space.

5. The Debtors determined that they would maximize value in the cases through multiple sales.

6. Individual Debtors are currently lessees under multiple unexpired, non-residential leases as to which the Debtors have not yet made a determination regarding assumption or rejection (the “Leases”).

1 7. It is likely that some or all of these Leases will be assumed and assigned in
2 connection with sales in these Cases. Further, the Debtors continue to utilize leased space to
3 directly effectuate their reorganization.

4 8. The Debtors seek an extension of their current deadline with respect to these
5 Leases in order to provide the Debtors with time to make a decision regarding assumption or
6 rejection and to move forward and close the sales of their assets and their *Chapter 11 Plan of*
7 *Liquidation* [Docket No. 2993]. The Debtors are current on postpetition rent under the Leases
8 and will continue to honor their obligations under the Leases until such time as an order is entered
9 providing for their assumption or rejection.

10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct.

12 Executed on September 25, 2019, in Los Angeles, California.

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RICHARD G. ADCOCK